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CLIENT.MATTER NUMBER: 13647.0015

COMMENTS:

Appl. No.	:	09/413,728
Applicants	:	Thomas J. Marsan, et al.
Filed	:	October 6, 1999
Art Unit	:	3639
Examiner	:	Igor Borissov
Docket No.	:	13647.0015
Customer No.	:	33629

Confirmation No. 2353

Enclosed for filing please find an Appeal Brief. This Appeal Brief will also be transmitted by 1ˢᵗ Class Mail today.

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BOARD OF PATENT APPEALS AND INTERFERENCES

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Certificate of Mailing Under 37 C.F.R. 1.8(a)

I hereby certify that these documents are being deposited with the United States Postal Service with sufficient postage for first class mail in an envelope addressed to the address indicated on the date indicated below:

Dated: March 6, 2006

Lorraine Davidoff
Lorraine Davidoff

Mail Stop Appeal Brief – Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

ATTENTION: Board of Patent Appeals and Interferences

TRANSMITTAL OF COMPLIANT APPEAL BRIEF

In response to the Notification of Non-Compliant Appeal Brief dated February 6, 2006, and in accordance with the requirements of 37 C.F.R. § 41.37, attached please find Appellant's Brief for consideration by the U.S. Patent and Trademark Office in connection with its examination of the above-referenced patent application. Three copies are enclosed herewith.
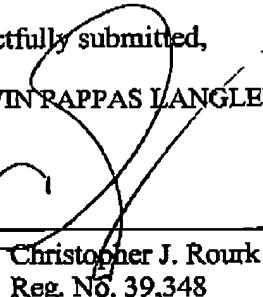
No fee is believed to be due with this resubmission of the Appeal Brief; however, the Commissioner of Patents and Trademarks is hereby authorized to charge any fee deficiency or to credit any fee overpayment relating to this matter to Deposit Account No. 50-0530.

Dated: March 6, 2006

Respectfully submitted,

GODWIN PAPPAS LANGLEY RONQUILLO LLP

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D1260773v1-13647.0015 PLEADINGS

☑ 003

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

In re Appellant:	§	
Marsan *et al.*	§	
Filed: October 6, 1999	§	Art Unit: 3629
Serial No.: 091413,728	§	Examiner Igor Borissov:
For: SYSTEM AND METHOD FOR	§	Docket No.: 014354-0001 (B65583)
PROCESSING RETRIEVAL REQUESTS	§	

APPEAL BRIEF

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PAGE 5/30 * RCVD AT 3/6/2006 6:13:43 PM [Eastern Standard Time] * SVR:USPTO-EFXRF-1/22 * DNIS:2738300 * CSID: * DURATION (mm-ss):09-44

I HEREBY CERTIFY THAT THIS CORRESPONDENCE IS BEING DEPOSITED WITH THE UNITED STATES POSTAL SERVICE AS FIRST CLASS MAIL IN AN ENVELOPE ADDRESSED TO: MAIL STOP APPEAL BRIEF-PATENTS, COMMISSIONER FOR PATENTS, P.O. BOX 1450, ALEXANDRIA, VIRGINIA 22313-1450, ON THE DATE INDICATED BELOW

BY: _____   DATE:

_____

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

In re:	Patent Application of	:Group Art Unit: 3629
Appln. No.:	09/413,728	:Examiner: Igor Borissov
Filed:	36438	
For:	SYSTEM AND METHOD FOR	: Attorney Docket
	PROCESSING RETRIEVAL REQUESTS	: No. 014354-0001 (1365583)

Mail Stop Appeal Brief-Patents Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450

APPELLANT'S BRIEF (37 C.F.R. § 1.192)

This brief is in furtherance of the Notice of Appeal, filed in this case on July 28, 2003 and received by the U,S, Patent and Trademark Office on August 4, 2003.

The fees required under § 1.17 are dealt with in the accompanying TRANSMITTAL OF APPEAL BRIEF.

This brief is transmitted in triplicate. (37 C.F.R. § 1.192(a)).

This brief contains these items under the following headings, and in the order set forth below (37 C.F.R. § 1.192(c)).

     J.   REAL PARTY IN INTEREST

     II.   RELATED APPEALS AND INTERFERENCES

     III.   STATUS OF CLAIMS

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IV.   STATUS OF AMENDMENTS

V.   SUMMARY OF CLAIMED SUBJECT MATTER

VI.   GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

VII.   ARGUMENT

VIII.   CLAIMS APPENDIX

IX.   EVIDENCE APPENDIX

X.   RELATED PROCEEDINGS APPENDIX

The final page of this brief bears the practitioner's signature.

I.   REAL PARTY OF INTEREST (37 C.F.R. § 1.192(c)(1))

The real party in interest in this appeal is Paymentech L.P.

II.   RELATED APPEALS AND INTERFERENCES (37 C.F.R. § 1.192(c)(2))

There are no appeals or interferences that will directly affect, or be directly affected by, or have a bearing on the Board's decision in this appeal.

III.   STATUS OF CLAIMS (37 C.F.R. § 1.192(c)(3))

The status of the claims in this application are:

       A.   TOTAL NUMBER OF CLAIMS IN APPLICATION

Claims in the application are: 27 claims. (Claims 1, 2, 4-7, 11-19, and 21-27)

Claims currently pending in the application: 22 pending claims

       B.   STATUS OF ALL THE CLAIMS

            1.   Claims cancelled: 3, 8, 9, 10, 20

            2.   Claims withdrawn from consideration but not cancelled: NONE

            3.   Claims pending: 1, 2, 4-7, 11-19, and 21-27.

            4.   Claims allowed: NONE.

            5.   Claims rejected: 1, 2, 4-7, 11-19, and 21-27.

       C.   CLAIMS ON APPEAL

The claims on appeal are: 1, 2, 4-7, 11-19, and 21-27.

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IV.   STATUS OF AMENDMENTS (37 C.F.R. § 1.192(c)(4))

The claims presently pending are those submitted January 21, 2003, in response to the non-final Office Action dated October 18, 2002 (paper no. 5).

V.   SUMMARY OF THE CLAIMED SUBJECT MATTER (37 C.F.R. § 1.192(c)(5))

The following summary is provided without any intention to limit the scope of the claims. The subject matter of claims 1, 2, 4-7, 11-19, and 21-27 is summarized below.

Claim 1 provides a system for processing transaction data that includes a substitute draft system (in one exemplary embodiment Fig. 2, item 200, pages 15-18) that receives a retrieval request (such as in response to a disputed charge from a cardholder) and which generates a substitute draft (such as a draft that includes everything except the cardholder's signature) in response to the retrieval request. A merchant interface (in one exemplary embodiment Fig. 2, item 116, pages 15-18) generates a merchant request in response to the retrieval request, such as a request for the merchant to provide a copy of the signed sales draft. A mediation charge system (in one exemplary embodiment Fig. 2, item 204, pages 15-18) receives a mediation charge, such as from a card rules organization, generates a merchant mediation charge if no response has been received to the merchant request, such as to assess the mediation charge to the merchant for g to respond.

Claim 11 provides a method for processing a retrieval request that includes receiving the retrieval request (in one exemplary embodiment Fig. 4A, item 402, pages 20-25), generating a substitute draft if it is determined that a retrieval request code is not in a set of retrieval requests codes that would prohibit the generation of the substitute draft (in one exemplary embodiment Fig. 413, item 422, pages 20-25); and generating a merchant request in response to the retrieval request (in one exemplary embodiment Fig. 4A, item 410, pages 20-25).

Claim 12 provides a method for processing a retrieval request that includes receiving the retrieval request (in one exemplary embodiment Fig. 4A, item 402, pages 20-25), generating a substitute draft if it is determined that issuing bank data is not in a set of issuing bank data that would prohibit the generation of the substitute draft (in one exemplary embodiment Fig. 413,

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item 418, pages 20-25), and generating a merchant request in response to the retrieval request (in one exemplary embodiment Fig. 4A, item 410, pages 20-25).

Claim 13 provides a method for processing a retrieval request that includes receiving the retrieval request (in one exemplary embodiment Fig. 4A, item 402, pages 20-25), generating a substitute draft if it is determined that bank card agency data is not in a set of bank card agency data that would prohibit the generation of the substitute draft (in one exemplary embodiment Fig. 4A, item 408, pages 20-25), and generating a merchant request in response to the retrieval request (in one exemplary embodiment Fig. 4A, item 410, pages 20-25).

Claim 14 provides a method for processing a retrieval request that includes receiving the retrieval request (in one exemplary embodiment Fig. 4A, item 402, pages 20-25), generating a substitute draft if it is determined that transaction amount data is not in a set of transaction amount data that would prohibit the generation of the substitute draft (in one exemplary embodiment Fig. 4A, item 408, pages 20-25), and generating a merchant request in response to the retrieval request (in one exemplary embodiment Fig. 4A, item 410, pages 20-25).

Claim 15 provides a method for processing a retrieval request that includes receiving the retrieval request (in one exemplary embodiment Fig. 4A, item 402, pages 20-25), generating a substitute draft if it is determined that card user data is not in a set of card user data that would prohibit the generation of the substitute draft (in one exemplary embodiment Fig. 4A, item 408, pages 20-25), and generating a merchant request in response to the retrieval request (in one exemplary embodiment Fig. 4A, item 410, pages 20-25).

Claim 16 provides a system for processing transaction data that includes a bank system generating a retrieval request in response to user-entered data (in one exemplary embodiment Fig. 1, item 106, pages 7-15), a bank card system receiving the retrieval request from the bank system (in one exemplary embodiment Fig. 1, item 104, pages 7-15), a transaction system receiving the retrieval request from the bank card system and generating a substitute draft and a merchant request in response to the retrieval request (in one exemplary embodiment Fig. 1, item 102, pages 7-15), the transaction system assessing a mediation charge against the merchant system if the merchant system has not generated sales draft data in response to the merchant request, and a merchant system coupled to the merchant interface, the merchant system receiving

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the merchant request and generating sales draft data in response to the merchant request (in one exemplary embodiment Fig. 1, item 110, pages 7-15).

Claim 27 provides a system for processing transaction data that includes a substitute draft system receiving a retrieval request and generating a substitute draft in response to the retrieval request (in one exemplary embodiment Fig. 2, item 200, pages 15-18), a merchant interface generating a merchant request in response to the retrieval request (in one exemplary embodiment Fig. 2, item 116, pages 15-18), and wherein signature data associated with the retrieval request is not used to generate the substitute draft.

Narrower embodiments of the invention are described below.

Claim 2 depends from claim 1 and includes an inhibit system (in one exemplary embodiment Fig. 2, item 202, pages 15-18) receiving the retrieval request and inhibiting the substitute draft system so as to prevent the substitute draft system from generating the substitute draft.

Claim 4 depends from claim 1 and includes a merchant system (in one exemplary embodiment Fig. 1, item 110, pages 7-15) receiving the merchant request and notifying an operator of the merchant request.

Claim 5 depends from claim 4 and includes the merchant system (in one exemplary embodiment Fig. 1, item 110, pages 7-15) retrieving identification data in response to the merchant request and transferring the identification data to the merchant interface system.

Claim 6 depends from claim 1 and includes a bank card system (in one exemplary embodiment Fig. 1, item 104, pages 7-15) transmitting the retrieval request to the substitute draft system and receiving the substitute draft.

Claim 7 depends from claim 6 and includes a bank system generating (in one exemplary embodiment Fig. 1, item 106, pages 7-15) the retrieval request and receiving the substitute draft from the bank card system.

Claim 17 depends from claim 16 and includes the transaction system (in one exemplary embodiment Fig. 1, item 102, pages 7-15) receiving bank system data with the retrieval request, and wherein the transaction system generates the substitute draft in response to the retrieval request and the bank system data.

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Claim 18 depends from claim 16 and includes the transaction system (in one exemplary embodiment Fig. 1, pages 7-15) receiving card user data with the retrieval request, and wherein the transaction system is operable to generate the substitute draft in response to the retrieval request and the card user data.

Claim 19 depends from claim 16 and includes the transaction system (in one exemplary embodiment Fig. 1, pages 7-15) receiving transaction amount data with the retrieval request, and wherein the transaction system generates the substitute draft in response to the retrieval request and the transaction amount data.

Claim 21 depends from claim 11 and includes (in one exemplary embodiment Figs. 4A and 4B, pages 20-25) determining that the retrieval request code is not in a set of retrieval requests codes that would prohibit the generation of the substitute draft is performed prior to receiving the retrieval request.

Claim 22 depends from claim 12 and includes (in one exemplary embodiment Figs. 4A and 4B, pages 20-25) determining that the issuing bank data is not in a set of set of issuing bank data that would prohibit the generation of the substitute draft comprises determining that no issuing bank would prohibit the generation of the substitute draft prior to receiving the retrieval request.

Claim 23 depends from claim 13 and includes (in one exemplary embodiment Figs. 4A and 4B, pages 20-25) determining that the bank card agency data is not in a set of set of bank card agency data that would prohibit the generation of the substitute draft comprises determining that no bank card agency would prohibit the generation of the substitute draft prior to receiving the retrieval request.

Claim 24 depends from claim 14 and includes (in one exemplary embodiment Figs. 4A and 4B, pages 20-25) determining that the transaction amount data is not in a set of set of transaction amount data that would prohibit the generation of the substitute draft is performed prior to receiving the retrieval request.

Claim 25 depends from claim 15 and includes (in one exemplary embodiment Figs. 4A and 4B, pages 20-25) determining that the card user data is not in a set of set of card user data that would prohibit the generation of the substitute draft is performed prior to receiving the retrieval request.

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Claim 26 depends from claim 1 and includes (in one exemplary embodiment Fig. 2, item 200, pages 15-18) the signature data associated with the retrieval request is not stored at the system for processing transaction data.

VI. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL ((37 C.F.R. § 1.192(c)(6))

1.0   Whether the examiner has violated explicit and long-standing claim construction rules of the federal circuit by construing the term "sales draft" to be synonymous with the term "substitute draft," in denying claims 1, 2, 4-7, 11-19 and 21-27 as being anticipated by Nair.

2.0   Whether the examiner's construction of mediation charge system is likewise incorrect.

3.0   Whether the examiner's construction of an inhibit system is likewise incorrect.

4.0   Whether the examiner's construction of a merchant system receiving the merchant request and notifying an operator of the merchant request is likewise incorrect.

5.0   Whether the examiner's construction of a merchant system that retrieves identification data in response to the merchant request and transfers the identification data to the merchant interface system is likewise incorrect.

6.0   Whether the examiner's construction of a bank card system transmitting the retrieval request to the substitute draft system and receiving the substitute draft is likewise incorrect.

7.0   Whether the examiner's construction of a bank system generating the retrieval request and receiving the substitute draft from the bank card system is likewise incorrect.

8.0   Whether the examiner's construction of generating the substitute draft if it is determined that a retrieval request code is not in a set of retrieval request codes that would prohibit the generation of a substitute draft is likewise incorrect.

9.0   Whether the examiner's construction of generating the substitute draft if it is determined that issuing bank data is not in a set of issuing bank data that would prohibit the generation of a substitute draft is likewise incorrect.

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10.0   Whether the examiner's construction of generating the substitute draft if it is
determined that bank card agency data is not in a set of bank card agency data that would
prohibit the generation of a substitute draft is likewise incorrect.

11.0   Whether the examiner's construction of generating the substitute draft if it is
determined that transaction amount data is not in a set of transaction amount data that would
prohibit the generation of a substitute draft is likewise incorrect.

12.0   Whether the examiner's construction of generating the substitute draft if it is
determined that card user data is not in a set of card user data that would prohibit the generation
of a substitute draft is likewise incorrect.

13.0   Whether the examiner's construction of wherein signature data associated with the
retrieval request is not stored at the system for processing transaction data is likewise incorrect.

14.0   Whether the examiner is acting under directions from the Director of the United
States Patent and Trademark Office to improperly deny inventors of property rights guaranteed
to them under the United States Constitution, in violation of the Due Process Clause.

VII. ARGUMENT ((37 C.F.R. § 1.192(c)(7))

**1.0   THE EXAMINER HAS VIOLATED EXPLICIT AND LONG-STANDING
CLAIM CONSTRUCTION RULES OF THE FEDERAL CIRCUIT BY CONSTRUING
THE TERM "SALES DRAFT" TO BE SYNONYMOUS WITH THE TERM
"SUBSTITUTE DRAFT," IN DENYING CLAIMS 1, 2, 4-7, 11-19 AND 21-25 AS BEING
ANTICIPATED BY NAIR.**

The Applicants believe that the Examiner's construction of claims 1, 2, 4-7, 11-19, and
21-25 as being anticipated by *Nair* is incorrect, because it reads elements out of the claims.
Federal Circuit precedent prohibits construing claims in a manner that reads elements out of the
claim. *Texas Instruments v. U.S. Int'l Trade Comm'n*, 988 F.2d 1165, 1171 (Fed. Cir. 1993).
Claim construction is reviewed de novo by the Board of Patent Appeals and Interferences. Thus,
it needs to be determined de novo whether the Examiner has properly construed the term
"substitute draft," which is an element of all pending claims.

Claim 1 includes a "system for processing transaction data comprising: a substitute draft
system operable to receive a retrieval request and to generate a substitute draft in response to the

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retrieval request; a merchant interface coupled to the substitute draft system, the merchant interface operable to generate a merchant request in response to the retrieval request; and a mediation charge system coupled to the merchant interface, the mediation charge system operable to receive a mediation charge and to generate a merchant mediation charge if no response has been received to the merchant request." By its plain meaning, a "substitute draft" excludes a "sales draft" – reading the term "substitute draft" to encompass "sales draft" would read the element "substitute draft" out of the claims. However, that is exactly what the Examiner does.

The Examiner construes a substitute draft to be the sales draft disclosed at column 68, lines 9-28 and in Figure 33 of *Nair*: "Reproduction of the receipt [i.e., sales draft] generally involves printing all data associated with the transaction such as purchase amount, account number, expiration date, authorization number, merchant's product identifying or other inventory code, and *cardholder signature.*" (Emphasis added). In contrast, it is clear from the present application that a substitute draft is not the sales draft, and does not include the cardholder's signature. See, e.g., application at page 4:19-24 – "The system thus allows a substitute draft to be generated in response to the retrieval request that may eliminate the need for a sales draft, and also provides for completion of retrieval requests by ensuring that such retrieval requests receive at least a substitute draft response." Likewise, at 24:10-18 – "Typically, a retrieval request will require the production of a sales draft authorizing the transaction. In lieu of a sales draft though, it is often possible to resolve disputes regarding a contested transaction by providing a substitute draft with additional information. The present method allows such substitute drafts to be submitted in parallel with notification of the merchant for production of a sales draft." It is fundamental that claims are to be construed in the light of the specifications and both are to be read with a view to ascertaining the invention. *PSC Computer Prods., Inc. v. Foxconn Int'l*, 355 F.3d 1353, 1359 (Fed. Cir. 2004). The Examiner's construction of a sales draft as being identical to a substitute draft fails to do so, and is improper.

Likewise, consider claim 16, where the terms "substitute draft" and "sales draft" are given explicitly different meanings within the claim. Claim 16 includes a "system for processing transaction data comprising: a bank system operable to generate a retrieval request in response to user-entered data; a bank card system coupled to the bank system, the bank card system operable

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to receive the retrieval request from the bank system; a transaction system coupled to the bank card system, the transaction system operable to receive the retrieval request from the bank card system and to generate a substitute draft and a merchant request in response to the retrieval request, the transaction system is operable to assess a mediation charge against the merchant system if the merchant system has not generated sales draft data in response to the merchant request; and a merchant system coupled to the merchant interface, the merchant system operable to receive the merchant request and to generate sales draft data in response to the merchant request." Here, resort to the specification is not even necessary – the Examiner's construction of substitute draft to encompass the sales draft is contrary to the plain language of the claims. First and foremost, interpretation of patent claims begins with an examination of the claims themselves. *SmithKline Diagnostics, Inc. v. Helena Lab. Corp.*, 859 F.2d 878, 882 (Fed. Cir. 1988); *Lemelson v. United States* , 752 F.2d 1538, 1551 (Fed. Cir. 1985). However, the specification nevertheless makes clear that the Examiner has improperly characterized the sales draft of *Nair* as the claimed substitute draft at pages 12:12-17 – "For example, if the merchant sales draft includes an *electronic signature file* transmitted by electronic means, then merchant interface system 116 may be operable to receive the file verify the contents, and transmit the file to the chargeback and retrieval system 114." (emphasis added).

The Examiner's claim construction is therefore flawed and improper under Federal Circuit law, because it ignores explicit claim language in construing the sales draft, which includes the cardholder signature, to be the same as a substitute draft, and also is contrary to the claims as interpreted in light of the specification. Reversal of the Examiner's rejection on these grounds is mandated by Federal Circuit law.

2.0   THE EXAMINER'S CONSTRUCTION OF MEDIATION CHARGE SYSTEM IS LIKEWISE INCORRECT.

Furthermore, the Examiner has improperly construed the term "mediation charge system," as claimed in claims 1 and 16. Per claim 1, the mediation charge system is "operable to receive a mediation charge and to generate a merchant mediation charge if no response has been received to the merchant request." The section of *Nair* cited by the Examiner that allegedly discloses the mediation charge system that generates a merchant mediation charge if no response has been received to the merchant request is voluminous - col. 2, lines 1 through 15, col. 4, lines

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18 through 28, col. 5 line 48 through col. 6 line 38, and column 17 line 10 through column 19, line 24. The cited section of *Nair* contains 1,967 words, whereas the claim element that is allegedly disclosed within these 1,967 words is only 36 words in length. Therefore, the construction of this claim term by the Examiner is flawed as it expands the meaning of the term well beyond the claim language of the claim to encompass completely unrelated and irrelevant subject matter, such as a merchant 13, a card issuer 19, and a card issuing association 18 – in other words, the Examiner construes a "mediation charge system" to be the entire credit card transaction system!

Nevertheless, if we do the Examiner's work for him and consider whether anything in the entire reference of *Nair* that discloses a mediation charge system that is "operable to receive a mediation charge and to generate a merchant mediation charge if no response has been received to the merchant request," nothing can be found. As shown in Figure 34, if a charge back is retrieval related, then it is resolved with a copy of the receipt, which includes the signature stored by the transaction processor. Thus, there is never any situation where a copy of a sales draft is requested from the merchant system 13 of *Nair*, much less any need to generate a merchant mediation charge if no sales draft is provided by the merchant. In fact, we see at 1520 of Figure 34 that it is determined whether the charge back is a customer dispute, which would require an operator to analyze the charge back. If it is determined that the charge back is a customer dispute, then it is transferred to the merchant for rebuttal at 1522, whereas it is otherwise handled by the transaction processor at 1525. Thus, there is no place for a mediation charge system in *Nair*, as there is no circumstance under which a merchant must provide a copy of a sales draft and is assessed with the mediation charge for failing to do so.

In conclusion, the failure of *Nair* to disclose either a substitute draft or a mediation charge system renders the claim construction asserted by the Examiner improper. The Examiner's construction of claim 1 as being anticipated by voluminous sections of *Nair*, in addition to being entirely vague, overbroad and meaningless, reads elements out of the claim, in violation of the legal requirements for claim construction imposed by the Federal Circuit, and should be reversed.

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3.0   THE EXAMINER'S CONSTRUCTION OF AN INHIBIT SYSTEM IS LIKEWISE INCORRECT.

Claim 2 depends from claim 1 and includes an inhibit system receiving the retrieval request and inhibiting the substitute draft system so as to prevent the substitute draft system from generating the substitute draft. The Examiner construes this element to be disclosed by the transaction processor of *Nair*, item 12 of Figure 2. However, this construction is flawed because *Nair* fails to disclose the generation or use of a substitute draft, such that the transaction processor 12 of *Nair* would be unable to generate a substitute draft, much less to inhibit the generation of the substitute draft. Furthermore, the word "inhibit" is not used anywhere in *Nair*, nor are any synonyms for inhibit such as "block" (other than as "block diagram'), "suppress," "prohibit," or "prevent." *Nair* simply fails to disclose or suggest inhibiting any action for any reason. Based on the totality of the teachings of *Nair*, in which a sales draft is generated using signature data stored by the transaction processor, the Examiner's construction of claim 2 as covering transaction processor 12 of *Nair* reads this element out of the claim, in violation of the legal requirements for claim construction imposed by the Federal Circuit, and should be reversed.

4.0   THE EXAMINER'S CONSTRUCTION OF A MERCHANT SYSTEM RECEIVING THE MERCHANT REQUEST AND NOTIFYING AN OPERATOR OF THE MERCHANT REQUEST IS LIKEWISE INCORRECT.

Claim 4 depends from claim 1 and includes a merchant system receiving the merchant request and notifying an operator of the merchant request. The Examiner construes this claim to cover column 68, lines 14-16 of *Nair*, which state "the host computer 40 of the transaction processor causes a receipt file stored in data storage 64 to be search by the reference number (or other identifying information) contained in the retrieval request. . . ." Applicants note that nothing in the cited section describes generating operator notification, and in fact, the Examiner has improperly construed claim 4 to be a process that works entirely without operator involvement. Based on the totality of the teachings of *Nair*, in which a sales draft is generated using signature data stored by the transaction processor, the construction of claim 4 as covering a system that does not require an operator reads this element out of the claim, in violation of the

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legal requirements for claim construction imposed by the Federal Circuit, and should be reversed.

5.0   THE EXAMINER'S CONSTRUCTION OF A MERCHANT SYSTEM THAT RETRIEVES IDENTIFICATION DATA IN RESPONSE TO THE MERCHANT REQUEST AND TRANSFERS THE IDENTIFICATION DATA TO THE MERCHANT INTERFACE SYSTEM IS LIKEWISE INCORRECT.

Claim 5 depends from claim 4 and includes that the merchant system retrieves identification data in response to the merchant request and transfers the identification data to the merchant interface system. The Examiner again construes this to be the automated process cited against claim 4. Based on the totality of the teachings of *Nair*, in which a sales draft is generated using signature data stored by the transaction processor and without any involvement by the merchant, the construction of claim 5 as covering a process that does not require an operator reads this element out of the claim, in violation of the legal requirements for claim construction imposed by the Federal Circuit, and should be reversed.

merchant system retrieves identification data in response to the merchant request and transfers the identification data to the merchant interface system

6.0   THE EXAMINER'S CONSTRUCTION OF A BANK CARD SYSTEM TRANSMITTING THE RETRIEVAL REQUEST TO THE SUBSTITUTE DRAFT SYSTEM AND RECEIVING THE SUBSTITUTE DRAFT IS LIKEWISE INCORRECT.

Claim 6 depends from claim 1 and includes a bank card system transmitting the retrieval request to the substitute draft system and receiving the substitute draft. The Examiner construes this claim to cover column 18, lines 30-31, column 68, lines 9-28 and 36-39, and column 17, lines 20-27 of *Nair*. As previously discussed, *Nair* entirely fails to disclose or suggest a substitute draft, and only discloses the provision of an actual sales draft with the accompanying signature. Based on the totality of the teachings of *Nair*, in which a sales draft is generated using signature data stored by the transaction processor, the construction of claim 6 as covering a process that does not provide a substitute draft reads this element out of the claim, in violation of the legal requirements for claim construction imposed by the Federal Circuit, and should be the merchant reversed.

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7.0 THE EXAMINER'S CONSTRUCTION OF A BANK SYSTEM GENERATING THE RETRIEVAL REQUEST AND RECEIVING THE SUBSTITUTE DRAFT FROM THE BANK CARD SYSTEM IS LIKEWISE INCORRECT.

Claim 7 depends from claim 6 and includes a bank system generating the retrieval request and receiving the substitute draft from the bank card system. The Examiner again construes this claim to cover column 18, lines 30-31, column 68, lines 9-28 and 36-39, and column 17, lines 20-27 of *Nair*. As previously discussed, *Nair* entirely fails to disclose or suggest a substitute draft, and only discloses the provision of an actual sales draft with the accompanying signature. Based on the totality of the teachings of *Nair*, in which a sales draft is generated using signature data stored by the transaction processor, the construction of claim 7 as covering a process that does not provide a substitute draft reads this element out of the claim, in violation of the legal requirements for claim construction imposed by the Federal Circuit, and should be reversed.

8.0 THE EXAMINER'S CONSTRUCTION OF GENERATING THE SUBSTITUTE DRAFT IF IT IS DETERMINED THAT A RETRIEVAL REQUEST CODE IS NOT IN A SET OF RETRIEVAL REQUEST CODES THAT WOULD PROHIBIT THE GENERATION OF A SUBSTITUTE DRAFT IS LIKEWISE INCORRECT.

Claim 11 covers a "method for processing a retrieval request comprising: receiving the retrieval request; generating the substitute draft if it is determined that a retrieval request code is not in a set of retrieval requests codes that would prohibit the generation of the substitute draft; and generating a merchant request in response to the retrieval request." For this claim, the Examiner construes "generating the substitute draft if it is determined that a retrieval request code is not in a set of retrieval request codes that would prohibit the generation of a substitute draft" to be the voluminous materials at col. 2, lines 1 through 15, col. 4, lines 18 through 28, col. 5 line 48 through col. 6 line 38, and column 17 line 10 through column 19, line 24, as well as additional materials at column 46, lines 46-49, column 50, lines 28-35, and column 68, lines 9-28. The Examiner also cited this section against the mediation charge system – this is clear evidence that the Examiner has improperly construed two claim elements as covering the same voluminous subject matter, which, as previously explained, covers the entire credit transaction processing system from issuing banks to merchants.

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Regardless of whether this section is construed to cover generation of a substitute draft or a mediation charge system, based on the totality of the teachings of *Nair*, in which a sales draft is generated using signature data stored by the transaction processor, the construction of claim 11 as covering a process that does not provide a substitute draft reads this element out of the claim, in violation of the legal requirements for claim construction imposed by the Federal Circuit, and should be reversed.

It is further noted that *Nair* utterly fails to disclose any functionality based on retrieval request codes. For example consider the definition of "retrieval request" provided by *Nair* at column 18, lines 16-23: "A 'retrieval request' is a request or inquiry made of a merchant or merchant's transaction processor, typically from a cardholder or card issuer, for a hard copy of documentation associated with a given transaction. Typically, a transaction may be charged back to the transaction processor or merchant if the requested documentation is not provided within a time limit set under card issuing association regulations." Likewise, consider the functionality disclosed at column 68, lines 9-14: "Starting in FIG. 33 at step 1401, a transaction processor 12 receives a retrieval request from one of the card issuing associations 18a-d. This retrieval request contains certain identifying information such as a transaction reference number, cardholder account number, transaction date, and transaction amount." There is no mention of any retrieval request codes, much less a set of retrieval request codes for which generation of a substitute draft is inhibited. One of ordinary skill in the art reading *Nair* would be led to understand that there is only a single retrieval request code at best, as no disclosure of more than one code is provided anywhere in *Nair*. The construction of claim 11 as covering a process that does not provide a set of retrieval request codes for which generation of a substitute draft is prohibited reads this element out of the claim, in violation of the legal requirements for claim construction imposed by the Federal Circuit, and should be reversed.

9.0   THE EXAMINER'S CONSTRUCTION OF GENERATING THE SUBSTITUTE DRAFT IF IT IS DETERMINED THAT ISSUING BANK DATA IS NOT IN A SET OF ISSUING BANK DATA THAT WOULD PROHIBIT THE GENERATION OF A SUBSTITUTE DRAFT IS LIKEWISE INCORRECT.

Claim 12 includes a "method for processing a retrieval request comprising: receiving the retrieval request; generating the substitute draft if it is determined that issuing bank data is not in

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a set of issuing bank data that would prohibit the generation of the substitute draft; and generating a merchant request in response to the retrieval request." For this claim, the Examiner construes "generating the substitute draft if it is determined that issuing bank data is not in a set of issuing bank data that would prohibit the generation of a substitute draft" to again be the voluminous materials at col. 2, lines 1 through 15, col. 4, lines 18 through 28, col. 5 line 48 through col. 6 line 38, and column 17 line 10 through column 19, line 24, column 46, lines 4649, column 50, lines 28-35, and column 68, lines 9-28, instead of the mediation charge system for which this section was cited against claim 1 or the retrieval request code functionality for which this section was cited against claim 11. Apparently, this multi-purpose section, which covers the entire credit transaction system from card issuer to merchant, discloses every single element for which the Examiner is unable to find anything that matches an explicit construction of the term at issue.

As previously discussed, *Nair* utterly fails to disclose generation of a substitute draft, much less any functionality that requires determining whether issuing bank data is in a set of issuing bank data for which a substitute draft should not be generated. The construction of claim 12 as covering a process that does not provide a set of issuing bank codes for which generation of a substitute draft is prohibited reads this element out of the claim, in violation of the legal requirements for claim construction imposed by the Federal Circuit, and should be reversed.

10.0   THE EXAMINER'S CONSTRUCTION OF GENERATING THE SUBSTITUTE DRAFT IF IT IS DETERMINED THAT BANK CARD AGENCY DATA IS NOT IN A SET OF BANK CARD AGENCY DATA THAT WOULD PROHIBIT THE GENERATION OF A SUBSTITUTE DRAFT IS LIKEWISE INCORRECT.

Claim 13 includes a "method for processing a retrieval request comprising: receiving the retrieval request; generating the substitute draft if it is determined that bank card agency data is not in a set of bank card agency data that would prohibit the generation of the substitute draft; and generating a merchant request in response to the retrieval request." For this claim, the Examiner yet again construes "generating the substitute draft if it is determined that bank card agency data is not in a set of bank card agency data that would prohibit the generation of a substitute draft" to be the voluminous, multi-purpose materials at col. 2, lines 1 through 15, col. 4, lines 18 through 28, col. 5 line 48 through col. 6 line 38, and column 17 line 10 through

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column 19, line 24, column 46, lines 46-49, column 50, lines 28-35, and column 68, lines 9-28, instead of the mediation charge system for which this section was cited against claim 1, the retrieval request code functionality for which this section was cited against claim 11, or the issuing bank code functionality for which this section was cited against claim 12. One is beginning to see a pattern in the Examiner's rejection of the claims - whenever the Examiner is unable to properly construe an element so as to find it in *Nair*, the Examiner simply points to this general purpose section of *Nair* as anticipating the element. However, this is not sufficient to establish a basis for rejection of the claims under 35 U.S.C. 102(b) under *Nair* - each element of the claimed invention must be present and explicitly disclosed or suggested, which implicitly requires the element to be construed by the Examiner.

As previously discussed, *Nair* utterly fails to disclose generation of a substitute draft, much less any functionality that requires determining whether bank card agency data is in a set of bank card agency data for which a substitute draft should not be generated. The construction of claim 13 as covering a process that does not provide a set of bank card agency data for which generation of a substitute draft is prohibited reads this element out of the claim, in violation of the legal requirements for claim construction imposed by the Federal Circuit, and should be reversed.

11.0 THE EXAMINER'S CONSTRUCTION OF GENERATING THE SUBSTITUTE DRAFT IF IT IS DETERMINED THAT TRANSACTION AMOUNT DATA IS NOT IN A SET OF TRANSACTION AMOUNT DATA THAT WOULD PROHIBIT THE GENERATION OF A SUBSTITUTE DRAFT IS LIKEWISE INCORRECT.

Claim 14 includes a "method for processing a retrieval request comprising: receiving the retrieval request; generating the substitute draft if it is determined that transaction amount data is not in a set of transaction amount data that would prohibit the generation of the substitute draft; and generating a merchant request in response to the retrieval request." For this claim, the Examiner construes "generating the substitute draft if it is determined that transaction amount data is not in a set of transaction amount data that would prohibit the generation of a substitute draft" to be the voluminous multi-purpose materials at col. 2, lines 1 through 15, col. 4, lines 18 through 28, col. 5 line 48 through col. 6 line 38, and column 17 line 10 through column 19, line

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24, column 46, lines 46-49, column 50, lines 28-35, and column 68, lines 9-28, instead of the mediation charge system for which this section was cited against claim 1, the retrieval request code functionality for which this section was cited against claim 11, the issuing bank code functionality for which this section was cited against claim 12, or the bank card agency data functionality for which this section was cited against claim 13. As previously discussed, *Nair* utterly fails to disclose generation of a substitute draft, much less any functionality that requires determining whether transaction amount data is in a set of transaction amount data for which a substitute draft should not be generated. The construction of claim 14 as covering a process that does not provide a set of transaction amount data for which generation of a substitute draft is prohibited reads this element out of the claim, in violation of the legal requirements for claim construction imposed by the Federal Circuit, and should be reversed.

12.0   THE EXAMINER'S CONSTRUCTION OF GENERATING THE SUBSTITUTE DRAFT IF IT IS DETERMINED THAT CARD USER DATA IS NOT IN A SET OF CARD USER DATA THAT WOULD PROHIBIT THE GENERATION OF A SUBSTITUTE DRAFT IS LIKEWISE INCORRECT.

Claim 15 includes a "method for processing a retrieval request comprising: receiving the retrieval request; generating the substitute draft if it is determined that card user data is not in a set of card user data that would prohibit the generation of the substitute draft; and generating a merchant request in response to the retrieval request." For this claim, the Examiner construes "generating the substitute draft if it is determined that card user data is not in a set of card user data that would prohibit the generation of a substitute draft" to again be the voluminous, multi-purpose materials at col. 2, lines 1 through 15, col. 4, lines 18 through 28, col. 5 line 48 through col. 6 line 38, and column 17 line 10 through column 19, line 24, column 46, lines 46-49, column 50, lines 28-35, and column 68, lines 9-28, instead of the mediation charge system for which this section was cited against claim 1, the retrieval request code functionality for which this section was cited against claim 11, the issuing bank code functionality for which this section was cited against claim 12, the bank card agency data functionality for which this section was cited against claim 13, or the transaction amount data functionality for which this section was cited against claim 14. As previously discussed, *Nair* utterly fails to disclose generation of a substitute draft, much less any functionality that requires determining whether card user data is in a set of card

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user data for which a substitute draft should not be generated. The construction of claim 15 as covering a process that does not provide a set of card user data for which generation of a substitute draft is prohibited reads this element out of the claim, in violation of the legal requirements for claim construction imposed by the Federal Circuit, and should be reversed.

13.0 THE EXAMINER'S CONSTRUCTION OF WHEREIN SIGNATURE DATA ASSOCIATED WITH THE RETRIEVAL REQUEST IS NOT STORED AT THE SYSTEM FOR PROCESSING TRANSACTION DATA IS LIKEWISE INCORRECT.

Claim 26 depends from claim 1 wherein signature data associated with the retrieval request is not stored at the system for processing transaction data. It is noted that this claim was specifically added in order to point out the flaw with the Examiner's rejection of the claims over *Nair*. In response, the Examiner rejected claim 26 under 35 U.S.C. 103(a) over *Nair*, instead of 35 U.S.C. 102, apparently not understanding that the references that are used to reject a claim must suggest or disclose each element of the claim regardless of whether the basis for the rejection is 35 U.S.C. 102 or 35 U.S.C. 103. The Examiner states that it "would have been an obvious matter of design choice at the time the invention was made to modify *Nair et al.* to include that the signature data associated with the retrieval request is not used to generate the substitute draft because it is well known in the art to use various record data units for computerized transaction record systems, See, for example, Johnson *et al.* (US 5,813,009) showing a digital camera as an input data source (Abstract; column 8, lines 46-59)." Why is claim 26 rejected under 35 U.S.C. 103(a) as being obvious over only *Nair* when a second reference is also cited against the claim? This is not a 103 rejection, but rather a 102 rejection. Furthermore, and more importantly, the cited teaching of the reference "a digital camera as an input data source" fails to provide the element of claim 26 that is missing from *Nair*. *Nair* discloses a system for processing transaction data (transaction processor 12) that stores signature data in order to generate a sales draft, so as to make the generation of a substitute draft unnecessary. Thus, by explicitly noting that the signature data, i.e., the signed copy of the sales draft - is not stored at the transaction processor 12, this forces one to the inescapable conclusion that *the substitute draft does not include signature data*. The citation of Johnson or any other reference that discloses cameras, scanners, or other input data sources is completely irrelevant. The rejection of claim 26 under 35 U.S.C. 103(a) in light of *Nair*, while citing but not explicitly

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relying the teachings of a second reference such as Johnson, is improper, not only because it fails to cite the correct basis for the rejection of the claim but also because it reads the element of generating a substitute draft that does not include signature data out of the claim, in violation of the legal requirements for claim construction imposed by the Federal Circuit, and should be reversed.

14.0 THE EXAMINER IS ACTING UNDER DIRECTIONS FROM THE DIRECTOR OF THE UNITED STATES PATENT AND TRADEMARK OFFICE TO IMPROPERLY DENY INVENTORS OF PROPERTY RIGHTS GUARANTEED TO THEM UNDER THE UNITED STATES CONSTITUTION, IN VIOLATION OF THE DUE PROCESS CLAUSE.

In *State Street Bank & Trust Co. v. Signature Financial Group*, 149 F.3d 1368 (Fed. Cir. 1998), the Federal Circuit held that software-implemented inventions that are drawn to methods of doing business are no different from any other inventions for which patent protection may be sought, such that property owners of such patentable inventions have a property interest that must be protected under the Due Process Clause of the United States Constitution. The U. S. Patent and Trademark Office has instituted programs, quotas, and other arbitrary and capricious requirements that deprive such property owners of their rights under the Patent Laws without an articulated state interest. This patent application has been assigned to Class 705, which is the class which has been targeted for such unfair treatment by the U. S. Patent and Trademark Office.

Evidence of this unfair treatment is provided by statistics published by the U. S. Patent and Trademark Office a http://www.uspto.gov/web/menu/pbmethod/applicationfiling.htm. This information clearly demonstrates that, given an average lag time between filing and issuance of 24 months, that only 1.2% of the patents in the art unit to which this application is assigned were allowed. In stark contrast, the information at http://www.uspto.gov/web/offices/ac/ido/oeip/taf/us_stat.htm shows that 164,293 utility patents issued in 2004 from 334,445 utility applications filed in 2002, an allowance rate of almost 50% . Given this prima facie showing that applications assigned to Class 705 are being treated in an arbitrary and capricious manner, Applicants seek a finding that the U.S. Patent and Trademark Office is treating such applications

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in violation of their responsibilities under the Patent Laws of the United States of America, including 35 U.S.C. 2(b)(2)(C) and (F).

VIII. CLAIMS APPENDIX (37 C.F.R. § 1.192(c)(8))

The text of the claims involved in the appeal are as follows:

1.   A system for processing transaction data comprising:

a substitute draft system operable to receive a retrieval request and to generate a substitute draft in response to the retrieval request;

a merchant interface coupled to the substitute draft system, the merchant interface operable to generate a merchant request in response to the retrieval request; and

a mediation charge system coupled to the merchant interface, the mediation charge system operable to receive a mediation charge and to generate a merchant mediation charge if no response has been received to the merchant request.

2.   The system of claim 1 further comprising an inhibit system coupled to the substitute draft system, the inhibit system operable to receive the retrieval request and to inhibit the substitute draft system so as to prevent the substitute draft system from generating the substitute draft.

4.   The system of claim 1 further comprising a merchant system coupled to the merchant interface, the merchant system operable to receive the merchant request and to notify an operator of the merchant request.

5.   The system of claim 4 wherein the merchant system is operable to retrieve identification data in response to the merchant request and to transfer the identification data to the merchant interface system.

6.   The system of claim 1 further comprising a bank card system coupled to the substitute draft system, the bank card system operable to transmit the retrieval request to the substitute draft system and to receive the substitute draft.

7.   The system of claim 6 further comprising a bank system coupled to the bank card system, the bank system operable to generate the retrieval request and to receive the substitute draft from the bank card system.

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11.   A method for processing a retrieval request comprising:

receiving the retrieval request;

generating the substitute draft if it is determined that a retrieval request code is not in a set of retrieval requests codes that would prohibit the generation of the substitute draft; and

generating a merchant request in response to the retrieval request.

12.   A method for processing a retrieval request comprising: receiving the retrieval request;

generating the substitute draft if it is determined that issuing bank data is not in a set of issuing bank data that would prohibit the generation of the substitute draft; and

generating a merchant request in response to the retrieval request.

13.   A method for processing a retrieval request comprising: receiving the retrieval request;

generating the substitute draft if it is determined that bank card agency data is not in a set of bank card agency data that would prohibit the generation of the substitute draft; and generating a merchant request in response to the retrieval request.

14.   A method for processing a retrieval request comprising: receiving the retrieval request;

generating the substitute draft if it is determined that transaction amount data is not in a set of transaction amount data that would prohibit the generation of the substitute draft; and generating a merchant request in response to the retrieval request.

15.   A method for processing a retrieval request comprising: receiving the retrieval request;

generating the substitute draft if it is determined that card user data is not in a set of card user data that would prohibit the generation of the substitute draft; and

generating a merchant request in response to the retrieval request.

16.   A system for processing transaction data comprising:

a bank system operable to generate a retrieval request in response to user-entered data;

a bank card system coupled to the bank system, the bank card system operable to receive the retrieval request from the bank system;

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a transaction system coupled to the bank card system, the transaction system operable to receive the retrieval request from the bank card system and to generate a substitute draft and a merchant request in response to the retrieval request, the transaction system is operable to assess

a mediation charge against the merchant system if the merchant system has not generated sales draft data in response to the merchant request; and

a merchant system coupled to the merchant interface, the merchant system operable to receive the merchant request and to generate sales draft data in response to the merchant request.

17.   The system of claim 16 wherein the transaction system is operable to receive bank system data with the retrieval request, and wherein the transaction system is operable to generate the substitute draft in response to the retrieval request and the bank system data.

18.   The system of claim 16 wherein the transaction system is operable to receive card user data with the retrieval request, and wherein the transaction system is operable to generate the substitute draft in response to the retrieval request and the card user data.

19.   The system of claim 16 wherein the transaction system is operable to receive transaction amount data with the retrieval request, and wherein the transaction system is operable to generate the substitute draft in response to the retrieval request and the transaction amount data.

21.   The method of claim 11 wherein determining that the retrieval request code is not in a set of retrieval requests codes that would prohibit the generation of the substitute draft is performed prior to receiving the retrieval request.

22.   The method of claim 12 wherein determining that the issuing bank data is not in a set of set of issuing bank data that would prohibit the generation of the substitute draft comprises determining that no issuing bank would prohibit the generation of the substitute draft prior to receiving the retrieval request.

23.   The method of claim 13 wherein determining that the bank card agency data is not in a set of set of bank card agency data that would prohibit the generation of the substitute draft comprises determining that no bank card agency would prohibit the generation of the substitute draft prior to receiving the retrieval request.

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24. The method of claim 14 wherein determining that the transaction amount data is not in a set of set of transaction amount data that would prohibit the generation of the substitute draft is performed prior to receiving the retrieval request.

25. The method of claim 15 wherein determining that the card user data is not in a set of set of card user data that would prohibit the generation of the substitute draft is performed prior to receiving the retrieval request.

26. The system of claim 1 wherein signature data associated with the retrieval request is not stored at the system for processing transaction data.

27. A system for processing transaction data comprising:

a substitute draft system receiving a retrieval request and generating a substitute draft in response to the retrieval request;

a merchant interface coupled to the substitute draft system, the merchant interface generating a merchant request in response to the retrieval request; and

wherein signature data associated with the retrieval request is not used to generate the substitute draft.

IX. EVIDENCE APPENDIX (37 C.F.R. § 1.192(c)(9))

None

X. RELATED PROCEEDINGS APPENDIX (37 C.F.R. § 1.192(c)(10))

None.

Respectfully submitted,

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